

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on 19.08.2026
Pronounced on 27.08.2026
Uploaded on 27.08.2026

WP(C) No. 2349/2022
C/W
CCP(S) No. 305/2020

Om Parkash Kalsotra
Age 86 Years.
S/o Sh. Hari Saran Kalsotra
H. No. 135, Ward No. 4.
Udhampur. Through his Attoreny
Holder Sh. Sanjay Bushan.

.... Appellant(s)/Petitioner(s)

Through: - Mr. Sunny Mahajan, Advocate.

v/s

1. UT of J&K Through Secretary to
Government, Agriculture Production
and Co-operative and Horticulture,
Government of J&K, Jammu. Respondent(s)
2. Director, Horticulture, Planning and
Marketing, Narwal, Jammu.
3. District Development.
Commissioner Udhampur
4. Area Marketing Officer, Horticulture
Planning and marketing Department,
Udhampur.
5. Municipal Council Through
Executive/Chief Executive Officer,
Municipal Council, Udhampur .
6. Kasturi Lal vaid S/o Lt. Nand Mahajan
R/o Near, SBI Satani Dhau Road Tehsil
Udhampur, District Udhampur.
7. Sh. Amit Vaid S/o Lt. Sh. Kishori Lal
Vaid
R/o Near SBI, Satani Dhau Road,
Udhampur.
8. Sh. Sachin Mangotra S/o Lt. Sh. Tilak
Raj Mangotra,

R/o Ward No. 05 House No. 51,
Barrian, Near Kali Mata Mandir, Tehsil
Udhampur District Udhampur.

9. Sh. Karun Mahajan S/o Lt. Sh. Sham
Lal Gupta, R/o Ward. No. 09 H No. 30,
Padha Gali, Tehsil Udhampur, District
Udhampur.

Through: - Mr. Suneel Malhotra, GA.
Mr. Anuj Dewan Raina, 6 to 9

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT

1. The petitioner, through the present writ petition, seeks allotment of a shop site at the Fruit and Vegetable Mandi, Kaller Hemmati, Udhampur. His grievance, in substance, is that despite having applied pursuant to the notification issued in the year 2004 and despite successive directions of this Court requiring consideration of his claim, he has been denied allotment while similarly situated applicants have been accommodated.
2. The controversy has a protracted history. On 14.06.2004, the Director, Horticulture Planning and Marketing, Jammu, Government of Jammu and Kashmir, issued a notice inviting applications for allotment of shop sites at the Fruit and Vegetable Market, Udhampur. The petitioner applied pursuant thereto. The process culminated on 13.12.2010 in allotment of 85 shop sites.
3. The said allotment became subject matter of several writ petitions, including OWP No. 1539/2010 filed by the petitioner along with four others. The stand of the respondents therein was that petitioner No. 1 could not be considered for allotment as he was not a member of the

concerned Fruit and Vegetable Association, Udhampur; had not been identified by the concerned Marketing Manager; had not furnished particulars of his trade turnover; and was not a direct affectee of the Fruit and Vegetable Mandi.

4. By judgment dated 29.08.2013, this Court disposed of nine writ petitions, including the petition filed by the petitioner, with a direction to the respondents to examine the grievances of the petitioners and pass fresh orders. Pursuant thereto, the respondents reconsidered the claims of 32 petitioners and, in the year 2014, enhanced the number of allotments from 85 to 109. The petitioner, Om Parkash Kalsotra, was, however, not allotted a shop site, allegedly on account of insufficiency of documents.
5. Aggrieved, the petitioner instituted OWP No. 766/2014. By judgment dated 15.10.2019, this Court directed the respondents to re-examine his case in the light of the prescribed eligibility criteria and the documents placed on record and, in the event of his being found eligible, to accord him the same treatment as had been directed in favour of the petitioners in OWP Nos. 380/2014 and 888/2013.
6. Alleging non-compliance with the aforesaid judgment, the petitioner instituted contempt proceedings bearing CCP(S) No. 305/2020. During their pendency, six shop sites were allotted on 12.03.2020. Thereafter, on 19.03.2020, the respondents informed the Court that, out of the five petitioners whose cases had been examined, only petitioner No. 1 had been found eligible, whereas the remaining four were found ineligible. Notwithstanding such finding of eligibility, the petitioner was not allotted a shop.

7. The petitioner's claim was thereafter rejected by communication dated 18.08.2022 on the ground that no space was available in the Fruit and Vegetable Mandi, Udampur, and, consequently, allotment of a shop site in his favour was not possible in the prevailing circumstances. It is this continued denial of allotment that has led to the institution of the present petition, WP(C) No. 2349/2022.
8. The case set up by the petitioner is that he had remained eligible throughout and that his claim was repeatedly overlooked despite successive directions of this Court. Particular emphasis is laid on the fact that six shops were allotted on 12.03.2020, whereas his eligibility was acknowledged only a week thereafter, on 19.03.2020, when the respondents took the stand that no shop was available. It is further urged that, notwithstanding the subsequent stand that all available shop sites stood exhausted, four persons were handed over shops on 22.04.2024.
9. According to the petitioner, the aforesaid sequence of events demonstrates that his claim was not dealt with fairly and that similarly situated persons were accorded preferential treatment. He alleges that the respondents adopted a pick-and-choose approach and discriminated against him on account of his repeated recourse to judicial proceedings.
10. The respondents contest the petition. Their case is that the petitioner's eligibility could be established only in the year 2020 and that, by then, no shop site was available. They further contend that approximately 274 applications had been received, comprising 148 applications from Udampur, 109 from Jammu, 5 from Reasi, 9 from Ramban and 3 from Doda, initially against 85 shops. Upon scrutiny, eligible applicants were

allotted shops on 07.02.2014. The petitioner's case, according to them, could not be considered at that stage as he failed to appear before the Committee despite notices.

11. The respondents further plead that the Mandi had become overcrowded and that, by the year 2022, all 119 carved-out shop sites stood allotted. As regards the six allotments made on 12.03.2020, it is submitted that those allotments were made in compliance with orders of this Court dated 09.03.2018, 23.04.2018 and 15.10.2019. Likewise, the action dated 22.04.2024 concerning four persons is stated not to constitute fresh allotment; according to the respondents, those persons had already been allotted shops in the year 2010 and possession alone was handed over to them pursuant to subsequent Court orders.

12. During the pendency of the present petition, the four persons who were handed over shops on 22.04.2024 were impleaded as respondent Nos. 6 to 9. They have also contested the petition.

13. Heard learned counsel for the parties and perused the record.

14. The material facts are substantially undisputed. The petitioner has been pursuing his claim since the year 2004 and the present proceedings constitute the third round of writ litigation. His earlier petitions, OWP Nos. 1539/2010 and 766/2014, resulted in directions requiring the respondents to examine his claim. Of particular significance is the judgment dated 15.10.2019, whereby the respondents were specifically directed to examine the documents produced by the petitioner and, if he was found eligible, to accord him the same treatment as the petitioners in OWP Nos. 380/2014 and 888/2013.

15. The petitioner had also asserted in the earlier proceedings that he deposited an amount of Rs.20,000/- by way of demand draft along with his application in the year 2004 and that the amount was neither returned nor his application finally rejected. It was in this backdrop that this Court considered it appropriate to direct a fresh examination of his eligibility.
16. Pursuant to the judgment dated 15.10.2019, the respondents ultimately examined the petitioner's case and found him eligible. What assumes significance, however, is the chronology in which the exercise was undertaken. Six shop sites were allotted on 12.03.2020, whereas the petitioner's eligibility was acknowledged only on 19.03.2020, when the respondents simultaneously took the position that no shop was available for allotment.
17. The respondents seek to justify the allotments dated 12.03.2020 on the ground that they were made pursuant to earlier orders of this Court. That explanation, by itself, does not answer the material issue arising for consideration, namely, why the petitioner's case, which was also required to be examined pursuant to the judgment dated 15.10.2019, was not considered contemporaneously with the cases of the other petitioners before the available shops were allotted.
18. This aspect assumes greater significance in the light of communication dated 20.02.2018 addressed by the Deputy Director, Horticulture Planning and Marketing, Jammu, to the learned Additional Advocate General. The communication recorded that four shops were then available in the Udhampur Market and could be allotted to four eligible petitioners, while the remaining petitioners, if found eligible, could be accommodated in

Phase-II of the Market, for which necessary steps had already been initiated. The communication thus indicates that accommodation of eligible litigants, including through further development of the Market, was under contemplation.

19. The governing principle is well settled. ***In R.D. Shetty v. International Airport Authority of India, AIR 1979 SC 1628***, the Supreme Court held, in substance, that the State, while dealing with public property or entering into contractual relations, cannot act arbitrarily or discriminate between similarly situated persons. State action must conform to a discernible standard founded upon reasonableness and non-discrimination. The distribution of State largesse is, therefore, subject to the discipline of Article 14 of the Constitution.

20. Tested on the aforesaid principle, the manner in which the petitioner's claim was dealt with does not inspire confidence. The respondents were under a specific judicial direction dated 15.10.2019 to examine his eligibility and, if found eligible, to accord him treatment similar to that extended to the petitioners in OWP Nos. 380/2014 and 888/2013. Yet, his case was not finally considered until after six shop sites had been allotted on 12.03.2020. No satisfactory explanation has been placed before this Court as to why his eligibility could not have been determined before those allotments were made.

21. The respondents have also taken somewhat inconsistent positions regarding the petitioner's non-consideration in the year 2014. At one stage, their case is that he did not satisfy the eligibility requirements; at another, it is asserted that his claim could not be considered because he

failed to appear before the Committee despite notices. These explanations, viewed in the context of the petitioner's application having remained pending for years and his deposit of Rs. 20,000/- having admittedly not been refunded, do not satisfactorily explain why his claim was not finally determined at the relevant time.

22. The subsequent increase in the number of shop sites is also of relevance.

Initially 85 shops were allotted; the number was thereafter increased to 109 and, according to the respondents themselves, by the year 2022 as many as 119 carved-out shops had been allotted. The record, as presented before this Court, does not satisfactorily disclose how the additional ten shop sites, beyond the 109 earlier allotted, came to be dealt with or whether the petitioner's claim was considered when those sites became available.

23. Insofar as the action dated 22.04.2024 is concerned, the respondents have clarified by way of statement of facts that the four persons concerned had already been allotted shops in the year 2010 and that only possession was handed over to them in 2024 pursuant to Court orders. In view of this clarification, the action dated 22.04.2024 cannot, by itself, be treated as constituting four fresh allotments. It nevertheless demonstrates that implementation of earlier allotment rights and judicial directions continued even at a later stage.

24. The decisive circumstance remains that, when the petitioner's eligibility was eventually determined pursuant to the judgment dated 15.10.2019, he was found eligible. Yet the exercise was undertaken only after available shops had been allotted to other petitioners. The respondents have failed

to furnish a satisfactory explanation for not considering his case contemporaneously with those persons, particularly when his entitlement to consideration flowed from the same judicial process.

25. The petitioner cannot claim an indefeasible right to allotment merely by reason of having submitted an application. He was, however, unquestionably entitled to fair, timely and non-discriminatory consideration of his claim in accordance with the prescribed criteria and the directions issued by this Court. The distinction is material. While eligibility by itself may not confer an absolute right to allotment, an eligible applicant cannot be deprived of a meaningful opportunity of consideration by postponing the determination of his claim until the available sites stand exhausted.

26. The plea of legitimate expectation raised by the petitioner must also be appreciated in this context. His application remained alive for a considerable period; the amount deposited by him was not refunded; successive orders of this Court required examination of his claim; and, ultimately, the respondents themselves found him eligible. These circumstances legitimately entitled him to expect that his claim would be dealt with fairly and on the same footing as those similarly situated. Such expectation does not translate into an automatic right to allotment, but it reinforces his right to a fair and non-arbitrary decision-making process.

27. Even if the respondents' contention that the petitioner's eligibility came to be conclusively established only in the year 2020 is accepted, it does not explain why the exercise directed by this Court on 15.10.2019 was not completed before allotments were made on 12.03.2020. Nor does it

satisfactorily explain why his application, pending since 2004, remained unresolved for such an extraordinary period despite repeated litigation and judicial intervention.

28. Administrative authorities dealing with public property are bound to act fairly, transparently and consistently. Their discretion cannot be exercised in a manner that results in similarly situated persons receiving materially different treatment without a rational basis. Equally, a citizen cannot be placed at a disadvantage merely because he has resorted to judicial remedies for enforcement of his claim.

29. Viewed cumulatively, the prolonged pendency of the petitioner's claim, the successive judicial directions requiring its consideration, the allotment of available shops immediately before his eligibility was formally acknowledged, and the absence of a satisfactory explanation for the timing and manner of such consideration establishes that the petitioner's case was not dealt with in a fair, timely and transparent manner. The impugned action, therefore, fails to satisfy the requirements of reasonableness and non-arbitrariness embodied in Article 14 of the Constitution.

30. Consequently, the repeated denial of meaningful consideration to the petitioner, despite the direction contained in the judgment dated 15.10.2019 and his subsequent recognition as an eligible applicant, cannot be sustained. The matter, therefore, warrants appropriate interference by this Court so as to remedy the prejudice occasioned to the petitioner by the arbitrary manner in which his claim has been dealt with.

31. For the foregoing reasons, this petition is **allowed**. A writ of mandamus is, accordingly, issued directing the respondents to accord meaningful consideration to the case of the petitioner for allotment of a shop site at the Vegetable & Fruit Mandi, Udhampur, in accordance with the applicable rules and policy, and to take a reasoned decision thereon within a period of six months from the date a copy of this order is made available to them by the petitioner. The petition is, accordingly, disposed of, along with all connected applications, if any.

32. In view of the order passed in the main petition, nothing survives in the contempt petition. Contempt proceedings are *closed*.

(Sanjay Parihar)
Judge

Jammu
27.08.2026
Javid Iqbal.

